be, the effects of their unreasonable diversion have been but too apparent, as many of the cases cited above bear witness. And, as said in a well reasoned case on this subject, whether the deposition or detention of water in, or its removal from land is caused by a water-course, or by other means, can create ordinarily no difference in the effects of such deposition, detention or removal. It is believed that this objection is without sufficient force and merit to prevent interference by the courts in proper cases. "The courts can protect this particular species of property in water as effectually as water rights of any other description." *Katz* v. *Walkinshaw,* supra. Instead of involving the law of the subject in confusion and interfering with its application, the rule laid down is not only eminently just, but "exceedingly plain, certain, practical and easy to apply to real conditions." *Stillwater* v. *Farmer,* supra.

The second objection is based, apparently, on the assumption that if the property owner has not an absolute unfettered right, he has none at all. All courts recognize the rights of drainage, mining, agriculture, and all other rights of property in water, but a limit is sought to be imposed so that an owner may not unreasonably, or to no good purpose to himself, damage or deprive his neighbor of benefits he might otherwise enjoy. It is believed that a wise application of this qualification, where the facts demand, will facilitate the progress of improvement generally. Indeed, it seems to the writer that the conservation and prevention of waste sought in the cases laying down the doctrine here discussed have been rendered indispensable by the higher and greater demands of progress and improvement.

What is a reasonable use must depend, of course, on the facts of the particular case and the needs and business of the owner. *East* v. *Houston, etc., R. Co.* (Tex. Civ. App.). 77 S. W. 646. "It is not unreasonable that the owner should dig wells and take therefrom all the water he needs in order to the fullest enjoyment and usefulness of his land as land, either for purposes of pleasure, abode, productiveness of soil, trade, manufacture, or for whatever else the land as land may serve." *Forbell* v. *N. Y.,* supra. If the use is proper and reasonable, the old rule as unqualified, applies, and there is no liability for damages, however serious they may be. The injury is "damnum absque injuria." *Haldeman* v. *Bruckhart* (1863), 45 Pa. (9 Wright), 514, 84 Am. Dec. 511; *Lybe's Appeal,* supra.

"Percolating water is not an exception to the general rule that rights in organized society are not absolute, but correlative, and that one man cannot be permitted to exercise any right if the direct effect of his act will be an injury to his neighbor." The doctrine of correlative rights in percolating water is a sane one, and still another application of the old maxim: "Sic utere tuo ut alienum non laedas." D. G. E.

WOMEN AS NOTARIES PUBLIC.—The Supreme Court of New Hampshire advises the Governor that a woman is not qualified under the laws of that state to fill the office of Notary Public (*In re Opinion of the Justices,* 62 Atl. Rep. 969). In *Ricker's Petition,* 66 N. H. 207, 29 Atl. Rep. 559, 24 L. R. A. 740, the court had held that a woman might be admitted to practice as an attorney-at-law on the ground that, although an attorney-at-law is an officer

of the court, his employment is not a public governmental office to which the common-law disability of women attaches. But the court, in this case, said: "By our common law, women do not vote in town-meeting. The reason is that voting is an exercise of governmental power. For the same reason, and by the same law, they do not hold public office." In the determination of the present inquiry the sole question is stated by the court to be "whether a public notary, or notary public, is a public officer exercising some part, however small, of governmental power, executive, legislative or judicial." The court considers that the office of notary public is a public governmental office, that women are by the common law of the state disabled from holding office, and that no evidence of legislative purpose or intention to change this common law is found.

Long usage appears to have established the legal incapacity of women for the exercise of public functions. (*Chorlton* v. *Lings,* L. R. 4 C. P. 374; *Beresford-Hope* v. *Sandhurst,* 23 Q. B. D. 79). "On the whole we may say that, though it has no formulated theory about the position of women, a sure instinct has already guided the law to a general rule which will endure until our own time. As regards private rights women [who are sole] are on the same level as men, though postponed in the canons of inheritance; but public functions they have none. In the camp, at the council board, on the bench, in the jury box there is no place for them." (Poll. & Mait., Hist. Eng. L. I, 485).

Where the state constitution provides that a public officer shall possess the qualifications of an elector, and also requires that an elector shall be a male citizen of the United States, the legislature has no power to authorize the appointment of women as notaries (*State* v. *Adams,* 58 Ohio St. 612, 65 Am. St. R. 792, 41 L. R. A. 727), and even where the constitution is silent on the subject of sex in relation to public office, the nature of the office of notary public and the usage that has prevailed in making appointments to that office have been held to prevent the legislature from providing that women may be appointed notaries (*Opinion of the Justices,* 165 Mass. 599, 43 N. E. 927, 32 L. R. A. 350); though in *State* v. *Davidson,* 92 Tenn. 531, 20 L. R. A. 311, it is stated that the constitution is silent on the subject, and also that the legislature has the power to make women eligible to the office.

In some states the right of women to hold the office of notary public is conferred expressly by constitution or statute, as North Dakota (Rev. Co. 1899 § 462) and Wisconsin (St. 1898 § 173), in others it is conferred by implication, as in Michigan where, by an amendment, in 1887, to the statute relating to notaries public, it was provided that "no person shall be eligible to receive such appointment unless he or she shall be * * * a citizen of this state" (C. L. 1897 § 2629). Before 1887, however, women had been appointed notaries in Michigan and their right to the office appears not to have been questioned. Probably in some states a woman would be held not disqualified, irrespective of express constitutional or statutory provisions on the subject. *Von Dorn* v. *Mengedoht,* 41 Neb. 525; *United States* v. *Bixby,* 10 Biss. 520; *Harbour-Pitt Shoe Co.* v. *Dixon,* (Ky. 1901) 60 S. W. 186.